NO. 18-DCR-0152

STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
vs.	§	**344TH JUDICIAL DISTRICT**
	§	
ZENA COLLINS STEPHENS	§	**CHAMBERS COUNTY, TEXAS**

FIRST AMENDED MOTION TO QUASH AND EXCEPTION TO THE FORM OF THE FELONY INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Zena Collins Stephens, Defendant, and brings this Motion to Quash and Exception to Form of the Indictment in violation of subsections 27.09 of the Texas Code of Criminal Procedure, and in support thereof shows:

SUMMARY OF ARGUMENT

The indictment charging Sheriff Zena Stephens with "Tampering with a Governmental Record" should be quashed, because it does not appear to be the "act of a proper grand jury" or to have been presented in the "proper court" as required by law, and it fails to meet all of the requisites prescribed by Articles 21.02 of the Texas Code of Criminal Procedure. The Indictment does not comply with subsection 27.09 of the Texas Code of Criminal Procedure, because the Grand Jury of Chambers County, Texas returned a true bill for an offense alleged to have occurred in Jefferson County, Texas. The venue is improper and does not vest the court with personal jurisdiction over Sheriff Zena Stephens.

Chapter 273 of the Texas Election Code governs criminal investigations and other enforcement proceedings related to elections. Section 273.021 grants the Attorney General's Office the ability to prosecute a criminal offense *prescribed by the election laws* of this state.[1]

[1] Tex. Elec. Code § 273.021(c)

An offense under subchapter 273 of the Texas Election Code provides, *an election code offense* may be prosecuted in the county in which the offense was committed or an adjoining county.[2] However, proper venue for offenses found within the Texas Penal Code that are not specifically stated, is the county where the offense was committed[3].

Here, the felony charge of "Tampering with Governmental Record" is found under subsection 37.10 of the Texas Penal Code, and not within the Texas Election Code. While the Attorney General possess the ability to prosecute criminal offenses within the Texas Election Code, the Texas Legislature has not granted the Attorney General's Office the right to prosecute all criminal offenses found within the Texas Penal Code. Furthermore, Chambers County is not the proper venue for prosecution of the Penal Code offense, as the Indictment alleged the offense to have occurred in Jefferson County.

FACTS

This matter is before this Honorable Court due to alleged criminal violations that arose during the 2016 Sheriffs race in Jefferson County, Texas.

The Government alleges that Sheriff Zena Stephens violated subsection 253.033 of the Texas Election Code by "accepting a cash contribution exceeding $100" on or about May 23, 2016 and on or about September 27, 2016, which is a class A misdemeanor.

The Government further alleged that Sheriff Zena Stephens violated subsection 37.10 of the Texas Penal Code by "tampering with a governmental record" on October 11, 2016, which is a state jail felony. The Attorney General's Office presented these charges to the Grand Jury of Chambers County, Texas. The offenses were alleged to have occurred in Jefferson County, Texas.

After presentment of the Attorney General's case, the Chambers County Grand Jury

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[22] Tex. Elec. Code § 273.024
[3] Tex. Pen. Code § 13.18.

returned an Indictment for the above referenced offenses on April 26, 2018.

AUTHORITY & ARGUMENT

Exceptions to the form of an indictment may be taken when it does not appear to have been presented in the proper court as required by law, or the lack of any requisite prescribed by Articles 21.02 of Texas Code of Criminal Procedure.[4] Subsection 21.02 requires that the indictment show on its face that it was an act of a grand jury of the proper county[5]. Furthermore, the indictment must show on its face that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented[6].

A. THE INDICTMENT IS INSUFFICIENT.

Texas Code of Criminal Procedure, Article 21.02 clearly and unequivocally provides that "an indictment shall be deemed sufficient if it has the following requisites: (3) it must appear to be "the act of a grand jury of the proper county," and (5) it must show that the place where the offense was committed is within the jurisdiction of the Court. The indictment, returned by the Chambers County Grand Jury, reflects, on its face, that *all* of the alleged offenses occurred in Jefferson County.[7] Accordingly, the Chambers County Grand jury is not a "grand jury of the proper county" because not all of the offenses indicted can be prosecuted in an adjoining county.

There is no statutory provision which permits a charge of "tampering with a governmental record" to be prosecuted in an "adjoining county." The Code of Criminal Procedure does recognize that in some instances, offenses may be prosecuted in other counties.[8] However, those offenses are enumerated in the Code of Criminal Procedure or in the enacting provisions of the

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[4] Tex. Crim. Proc. Code Ann. § 27.09.
[5]Tex. Code Crim. Proc. § 21.02(3).
[6] Tex. Code Crim. Proc. § 21.02(5).
[7] *See* Exhibit A
[8] Tex. Code Crim. P. Art. 21.06

statute. In the absence of an express statutory provision, "the proper county" for the prosecution of offenses is that in which the offense was committed.[9] In fact, universally, Texas Courts have found that the theme in the Texas Code of Criminal Procedure's venue provisions tends toward fixing venue in a county that is sufficiently connected to the offense alleged.[10]

The Texas Court of Criminal Appeals has characterized Texas venue statutes as "a species of codified 'substantial contacts' jurisdiction."[11] The Court went on to explain that for venue to lie, "the defendant, his conduct, his victim, or the fruits of his crime must have some relationship to the prosecuting county."[12] The Austin Court of Appeals offered even more clarity when it reiterated the legislative purposes of the venue statutes:

> Venue statutes function to ensure that jurors have a natural interest in the case because it touched their community; to ensure that prosecutions are initiated in counties that have some factual connection to the case, thus minimizing inconvenience to parties and witnesses; to aid predictability in judicial caseloads, and to ***prevent forum-shopping by the State.*** (emphasis added).[13]

Proper venue for offenses found within the Texas Penal Code that are not specifically stated, is the county where the offense was committed.[14] . It is necessary to the exercise of judicial authority[15]. For venue to lie, either the defendant, the defendant's conduct, the victim, or the fruits of the crime must have *some relationship to the prosecuting county*[16]. A state does not

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[9] Tex. Code Crim. P. Art. 13.18
[10] *See Murphy v. State*, 112 S.W.3d 592, 604 (Tex. Crim. App. 2003); *Soliz v. State*, 97 S.W.3d 137, 141 (Tex. Crim. App. 2003); *Dewalt v. State*, 307 S.W.3d 437, 460-61 (Tex. App.—Austin 2010, pet. ref'd); *Thompson v. State*, 244 S.W.3d 357, 366 (Tex. App. —Tyler 2006, pet. dism'd); *Lebleu v. State*, 192 S.W.3d 205, 212 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd).
[11] *Soliz*, 97 S.W.3d at 141
[12] *Id.*
[13] *Dewalt*, 307 S.W.3d at 460
[14] Tex. Pen. Code § 13.18
[15] Thomas v. State, 699 S.W.2d 845, 854 (Tex. Crim. App. 1985
[16] Wooten v. State, 331 S.W.3d 22, 26 (Tex. App.- Amarillo 2010, pet. ref'd)(emphasis added).

have the right to try a defendant anywhere the State chooses[17]. Failure to prove venue in the county of prosecution constitutes reversible error[18]. So, the Attorney General's lack of prosecutorial authority notwithstanding, Counts I-III could only be brought in a single indictment in Jefferson County[19].

The "act of a grand jury of the proper county" language applies to the entirety of the indictment, not just a portion of it. In short, the indictment cannot "appear to be the act of a grand jury of the proper county" if it is not returned in a county that is "the proper county" for *all* of the offenses alleged. Thus, the resulting indictment is insufficient and must be dismissed.

ELECTION CODE OFFENSES REQUIRE ALLEGATION "KNOWINGLY VIOLATING THE ELECTION CODE"

Finally, the indictment fails to contain necessary language. In Fogo v. State, the Texas Court of Criminal Appeals addressed the vagueness of criminal statutes at issue here.[20] In Fogo, an attorney made $750 cash contribution to a justice of peace. Through a motion to quash the attorney challenged the Constitutionality of the Texas Election § 253.003(a), which addresses the criminality of making a political contribution. The applicable provision here is §253.003(b) which addresses criminality in accepting political contributions. Specifically, only criminalizing receipt of contributions that the person "knows to have been made in violation of this chapter". Here the indictment omits that "knowing that acceptance of the contribution" violated the Texas election code. It is this component of the statute which is essential to a criminal allegation. The omission of this statutorily required language also merits quashing the indictment.

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[17] Cook v. Morrill, 783 F.2d 593, 595-96 (5th Cir. 1986).
[18] Sudds v. State, 140 S.W.3d 813, 816 (Tex. App. – Houston 2004).
[19] A separately filed Pretrial Writ of Habeas Corpus addresses the prosecutorial authority of the Texas Attorney General
[2020] Fogo v. State, 830 Sw2d 592 (Tex. Crim. 1991)

WHEREFORE, PREMISES CONSIDERED, Sheriff Zena Collins Stephens prays that the Court quash the Indictment due to the defects of form outlined above, and discharge Zena Collins Stephens.

Respectfully submitted,

Russell Wilson II
Law Office of Russell Wilson II
SBN 00794870
1910 Pacific Ave #15100
Dallas, Texas 75201
(469)573-0211

By: /S/RUSSELLWILSON II
Russell Wilson II
State Bar No. 00794870
Attorney for ZENA STEPHESON

Chad W. Dunn
Brazil & Dunn LLP
4201 Cypress Creek Pkwy, #530
Houston, TX 77068
Phone: (281) 580-6310
Fax: (281) 580-6362

By: /S/CHAD DUNN___
Chad Dunn
State Bar No. 24036507
Attorney for ZENA STEPHESON

SAMUEL & SON LAW FIRM, PLLC
2636 McFaddin
Beaumont, TX 77701
Tel: (409) 833-4111
Fax: (409) 838-2220

By: /s/ Sean C. Villery-Samuel___
Sean C. Villery-Samuel
State Bar No. 24070802
attysamuel@live.com
Attorney for Zena Collins Stephens

CERTIFICATE OF SERVICE

This is to certify that on January 8, 2019, a true and correct copy of the above and foregoing document was served on the Texas Attorney General, Chambers County, by electronic service through the Electronic Filing Manager.

Russell Wilson II
Russell Wilson II